

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

_____)	
In the Matter of:)	RE: Fall River – BAW/Solid Waste
)	
City of Fall River)	Closure/Capping of
)	Off-Site Waste Area
&)	1080 Airport Road, Fall River
)	ADMINISTRATIVE CONSENT ORDER
Browning-Ferris Industries, Inc.)	#ACO-SE-15-4001
_____)	

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The Massachusetts Department of Environmental Protection (the “MassDEP” or the “Department”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts, 02347.
2. Browning-Ferris Industries, Inc. (“BFI”) is a Massachusetts Corporation and maintains a place of business at 1080 Airport Road, Fall River, Massachusetts 02720. BFI’s mailing address for purposes of this Consent Order is 1080 Airport Road, Fall River, Massachusetts 02720.
3. The City of Fall River (the “City”) is a Massachusetts Municipality and maintains its principal offices at One Government Center, Fall River, Massachusetts 02722. The City’s mailing address for purposes of this Consent Order is One Government Center, Fall River, Massachusetts 02722.
4. Hereinafter, BFI and the City shall be referred to and collectively known as the “Respondents”.
5. Hereinafter, MassDEP and the Respondents will be referred to and collectively known as the “Parties”.

II. STATEMENT OF FACTS AND LAW

6. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 150 and 150A1/2, the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00, the Solid Waste Management Regulations at 310 CMR 19.000, M.G.L. c. 21E and the Massachusetts Contingency Plan (“MCP”) at 310 CMR 40.0000. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
7. The following facts and allegations have led MassDEP to issue this Consent Order:
 - A. On or about April 4, 1966, the City of Fall River leased property from the Greater Fall River Development Corporation for a landfill off of Airport Road in Fall River where the City operated a solid waste landfill through March of 1983.
 - B. On or about March 24, 1983, the Greater Fall River Development Corporation conveyed approximately 201 acres of property including the existing permitted landfill to Fall River Landfill, Inc. which then took over ownership and operation of the existing permitted landfill from the City.
 - C. On or about December 30, 1986, Browning-Ferris Industries, Inc. purchased the stock of Fall River Landfill, Inc.
 - D. In September 2001, while installing a leachate tank, BFI observed a shallow layer of solid waste material beyond the southern limits of the Phase I cap of the existing permitted landfill.
 - E. BFI reported the discovery of the waste to the MassDEP and proposed test pitting to evaluate the lateral extent of the in-place waste along the southwestern edge of the Phase I cap.
 - F. On January 8, 2003, the MassDEP approved BFI’s proposed test pitting program.
 - G. In December 2003, BFI excavated ten test pits within the cleared area between the toe of the Phase I slope and the drainage ditch to the south located on neighboring property identified as Lots 9 and 25, owned by Freeholders Limited Partnership (“Freeholders”) and Rex-Cut Products (“Rex-Cut”), respectively. It encountered buried waste comprised of municipal solid waste and construction and demolition debris at each location extending to depths between 13 and 20 feet below grade. Equipment limitations

prevented the identification of the full depth of buried waste in certain locations because the maximum reach of the excavator was 20 feet. The test pit survey did not delineate the full lateral extent of the buried waste, which appeared to extend into wooded areas to the south of the drainage ditch on Lots 9 and 25.

- H. As a result of the test pitting in 2003, BFI identified buried waste within the buffer zone area between the capped Phase I area of the existing permitted landfill and the property line and on adjacent Lots 9 and 25, together known as the “Off-Site Waste Area”.
- I. BFI documented the results of the test pit survey in its Supplemental CSA Report submitted to the MassDEP on or about July 21, 2006.
- J. On August 16 and 17, 2010, BFI performed 52 direct push soil borings to further delineate the lateral extent of the buried waste on Lots 9 and 25. BFI detected waste material in 18 of the 52 borings indicating that the lateral extent of the buried waste had been delineated. The results of the soil borings are depicted in a drawing by SITEC entitled “Limit of Buried Waste Determination Soil Boring and Test Pit Locations” dated August 24, 2010, (the “Plan”). The soil borings and test pitting show buried waste within the buffer zone between the toe of the slope of the Phase I area of the existing permitted landfill and the property boundary, on property owned by BFI adjacent to Lots 9 and 25 (hereinafter referred to as the “On-Property Area”). As depicted on the Plan, the soil borings and test pitting also show buried waste at the rear of Lots 9 and 25 and a small area at the Northwest corner of the City’s right of way for Horvitz Road (hereinafter referred to as the “Off-Property Area”). The On-Property Area and the Off-Property Area together comprise the Off-Site Waste Area.
- K. BFI has informed the MassDEP and the City that it intends to complete final capping and closure of the existing permitted landfill in the Spring of 2015. BFI intends to seek DEP approval of Certification of Closure, release of closure financial assurance and commencement of the existing permitted landfill’s post-closure period effective after MassDEP approval of the Certification of Closure.
- L. On April 7, 2014 representatives of the MassDEP and BFI met with the Fall River City Council Committee on Health and Environmental Affairs regarding the pending capping and closure of the existing permitted landfill including the results of BFI’s Comprehensive Site Assessment (“CSA”) and the buried waste in the Off-Site Waste

Area.

- M. By letter dated May 12, 2014, the MassDEP convened a meeting among representatives of the MassDEP, BFI, the City, Rex-Cut and Freeholders, to continue the dialogue and discuss next steps regarding addressing the Off-Site Waste Area in conjunction with the capping and closure of the existing permitted landfill.
- N. In that letter the MassDEP requested that BFI provide records it may have pertaining to assessment and waste characterization of the solid waste buried on the Rex-Cut and Freeholders properties.
- O. On or before May 28, 2014, BFI provided the MassDEP with the additional materials requested including aerial photographs of the landfill from 1961, 1971, 1977, 1980 and 1985; multiple sets of historical landfill plans and the results of the aforementioned 2003 test pitting and 2010 soil boring investigations.
- P. On May 28, 2014, representatives of the MassDEP met with representatives of the City, BFI, Rex-Cut and Freeholders to discuss next steps regarding addressing the Off-Site Waste Area.
- Q. At that meeting BFI presented the materials it had submitted to the MassDEP including historical plans and aerial photographs.
- R. Based upon the aerial photographs, plans and other materials, it appears that the waste was placed in the Off-Site Waste Area before 1980, while the City of Fall River was the landfill operator.
- S. By email dated August 12, 2014, the MassDEP confirmed to BFI that the remediation of the Off-Site Waste Area and placement of grading and shaping materials in the Off-Site Waste Area as conceptually proposed by BFI would not affect or delay closure certification or commencement of the post-closure period for all approved cells within the site assigned limits of the existing permitted landfill.
- T. On November 21, 2014, BFI submitted to the MassDEP a conceptual plan entitled SITEC Environmental Off-Site Waste Area Conceptual Corrective Action Plan dated November 18, 2014 (hereinafter the “Conceptual Corrective Action Plan”). As proposed in “Conceptual Corrective Action Plan”, the project will include the following:
 - i. The existing foot-print of the waste in the Off-Site Waste Area will be reduced to approximately 9.7 acres through the excavation and relocation of waste.

- ii. A three (3) year closure timeframe will be established, whereby approved landfill closure grading/shaping materials will be placed in the Off-Site Waste Area during the first two (2) years, in order to achieve proper closure grades/configuration, and during the third and final year, the Off-Site Waste Area's final capping system will be installed.
 - iii. The total amount of approved Off-Site Waste Area closure grading/shaping materials that would be used to close the Off-Site Waste Area would be approximately 252,000 cubic-yards ("yds³").
 - iv. Proposed materials to be used for grading and shaping include clean soils, street sweepings, mildly contaminated soils in accordance with the parameters established under MassDEP's Policy #COMM-97001 dated August 15, 1997, dewatered catchbasin cleanings, and dewatered dredge spoils.
 - v. When completed, through the use of the approved grading and shaping materials, the final maximum elevation of the capped grading and shaping material in the Off-Site Waste Area will be approximately 248-feet above mean sea level.
- U. On November 24, 2014, pursuant to the MassDEP's Revised Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites dated July 6, 2001 (the "Guidelines"), BFI and the City sponsored a public information session to describe the Conceptual Corrective Action Plan proposal.
- V. On November 24, 2014, MassDEP established a twenty-one (21) day Public Comment Period that ended on December 16, 2014. During the Public Comment Period, MassDEP received one set of public comments. MassDEP provided the comments to BFI for review.
- W. On March 24, 2014, BFI submitted a response to the public comments.
- X. As proposed in the Conceptual Corrective Action Plan, BFI intends to file with the MassDEP an application for approval of a Corrective Action Design ("CAD") for the Off-Site Waste Area and, upon issuance of a MassDEP CAD permit, implement a corrective action (the "Corrective Action") with respect to the Off-Site Waste Area, independent of the on-going supplemental CSA, Corrective Action Alternatives Analysis and Corrective Action process for the existing permitted landfill.
- Y. MassDEP has determined that BFI's "Conceptual Corrective Action Plan," as described

herein, meets the requirements of the Solid Waste Regulations and the Guidelines, and notified the Respondents that they may proceed with the preparation and submittal of requisite permit applications pursuant to the applicable requirements set forth at 310 CMR 19.000, and as required by this Consent Order regarding the Corrective Action for the Off-Site Waste Area. MassDEP agrees that it will not delay approval of BFI's Closure Certification or release of financial assurance for existing permitted landfill closure for any reason related to the Off-Site Waste Area and that such approvals will be separate and independent from the Corrective Action.

III. DISPOSITION and ORDER

For the reasons set forth above, the Department hereby issues, and the Respondents hereby consent to the following:

8. The Parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondents enter into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondents agree not to contest such facts and allegations for the limited purposes of the issuance or enforcement of this Consent Order.
9. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Section II of this Consent Order.
10. Respondents shall perform the following actions:

RESPONSIBILITIES OF THE CITY

11. Throughout the term of this Consent Order the City shall maintain and provide to BFI the existing access rights heretofore granted to BFI to perform the Corrective Action as approved by the MassDEP, and all other work or actions required or contemplated hereunder (including, without limitation, the permanent presence and maintenance of the buried waste and capping system) in the Off-Site Waste Area.
12. Prior to the date that BFI completes closure of the Off-Site Waste Area, the City shall grant and thereafter provide and maintain throughout the duration of the post-closure period for the Off-Site Waste Area, all rights necessary and convenient for BFI to perform routine post-closure care and maintenance of the Off-Site Waste Area. It is

expressly understood and agreed that this Consent Order does not apply to BFI's performance of any post-closure monitoring and maintenance.

13. MassDEP reserves the right to require the City to conduct additional assessment or action on the Off-Property Area, as deemed necessary to protect and maintain the environment free from objectionable nuisance conditions, dangers or threats to public health, safety, and the environment.

RESPONSIBILITIES OF BFI

GENERAL

14. The Parties acknowledge that BFI does not currently have, and will not hereby acquire any interest in the Freeholders, Rex-Cut or City properties other than the access right expressly granted by the City pursuant to this Consent Order and the separate Agreement between the City and BFI dated February, 2015, and that BFI shall not hereby or thereby be deemed to be owner, operator or otherwise legally responsible for such properties under applicable law, except as expressly provided herein. Nothing contained herein and no action taken by BFI pursuant to this Consent Order, in connection with the Corrective Action Plan or otherwise with respect to the Rex-Cut, Freeholders, or the City properties shall be deemed to constitute an admission by BFI or to render BFI legally responsible or in any other way liable for existing waste buried on those properties or any damage arising therefrom, except as expressly provided herein, and BFI hereby expressly disclaims any responsibility or liability whatsoever for the same.
15. MassDEP reserves the right to require BFI to conduct additional assessment or action on the On-Property Area, as deemed necessary to protect and maintain the environment free from objectionable nuisance conditions, dangers or threats to public health, safety, and the environment.

IMPLEMENTATION OF ENVIRONMENTAL ASSESSMENT

16. Within sixty (60) days of the Effective Date of this Consent Order, BFI shall submit a Scope of Work (BWP SW45, permit application) to install additional monitoring locations to supplement the existing monitoring network (i.e. groundwater, soil gas, surface water, etc.) for the existing permitted landfill in order to address the Off-Site Waste Area.
17. Within one-hundred and twenty (120) days of MassDEP's approval of the Scope of Work

permit application, BFI shall complete installation of all additional monitoring locations (i.e. groundwater monitoring wells, soil gas monitoring wells, etc.).

18. Within four-hundred and fifty-five (455) days of the Effective date of this Consent Order, BFI shall submit a Supplemental Comprehensive Site Assessment Report (“SCSA”) with respect to the Off-Site Waste Area that discusses the findings of the environmental site assessment for the Off-Site Waste Area. The SCSA report for the Off-Site Waste Area shall include a recommendation whether additional corrective actions beyond the MassDEP’s final approved CAD permit (as referenced in Paragraph 21M) for the Off-Site Waste Area in the form of a CAAA for the Off-Site Waste Area is necessary.

CORRECTIVE ACTION DESIGN PLANS

19. BFI shall ensure that all engineering work performed pursuant to the Consent Order shall be under the general direction and supervision of a qualified Massachusetts Registered Professional Engineer (“PE”) experienced in solid waste facility design and solid waste management. All Off-Site Waste Area closure grading/shaping materials that will be used in the Off-Site Waste Area closure project shall be classified and certified by PE or a Licensed Site Professional (“LSP”) prior to use at the Off-Site Waste Area.
20. BFI shall submit all required permit applications associated with this project in accordance with the provisions of 310 CMR 4.00 “Timely Action Schedule and Fee Provisions” regulations.
21. Within sixty (60) days of the Effective Date of this Consent Order, BFI shall submit a BWPSW25 – CAD permit application to MassDEP for the closure/capping of the Off-Site Waste Area. The CAD application shall comply with all applicable provisions of 310 CMR 4.00, 310 CMR 19.000, MassDEP’s Landfill Technical Guidance Manual (“Manual”), and all applicable Guidelines and Policies applicable to the Off-Site Waste Area. In addition to the “standard” features of a landfill closure plan, as required under 310 CMR 19.112, the CAD application shall also include the following components:
 - A. The CAD application shall describe the types and amounts of the total in-place volume of approved grading and shaping materials that will be used to achieve the proposed final grades and configuration of the Off-Site Waste Area. The grading/shaping materials that will be used in the Off-Site Waste Area’s closure may include clean soils, street sweepings, mildly contaminated soils in

accordance with the parameters established under MassDEP's Policy #COMM-97001 dated August 15, 1997, and dewatered catchbasin cleanings, and dewatered dredge spoils, as approved by the MassDEP.

- B. The CAD application shall include a "Materials Management Plan" that, at a minimum, describes methods and procedures for the testing, stockpiling and management of the delivered approved grading/shaping materials;
- C. The CAD application shall include details regarding the areas and amounts of all solid waste that will be excavated from the Off-Site Waste Area's existing foot-print perimeter in order to consolidate and reduce the size of the foot-print of the Off-Site Waste Area.
- D. The CAD application shall include details and construction features of all associated appurtenances, equipment, and structures that will be associated with the closure activities of the Off-Site Waste Area.
- E. The CAD application shall include a "Health and Safety Plan" ("HASP") as it pertains to worker safety and environmental measures that will be employed during the excavation/management of all waste materials as well as the Off-Site Waste Area closure activities in order to protect the workers from any dangers associated thereto. The HASP plan shall address the methods and procedures concerning the handling of any excavated waste materials that could potentially be dangerous and/or would be unsuitable for reburial in the Off-Site Waste Area, and a plan as to how unacceptable waste would be disposed of at another appropriately permitted waste disposal facility. The HASP shall also address the materials management practices for the re-burial of the excavated wastes in the Off-Site Waste Area.
- F. The CAD application shall include a "Confirmatory Soil Sampling and Analysis Plan" regarding the procedures and practices for testing of all waste excavation areas of the Off-Site Waste Area in order to ensure that during and after the excavation/consolidation process, the excavated areas have been cleaned of all previously buried waste and that there is no residual unacceptable contamination from the excavated areas. MassDEP shall be periodically apprised of the findings of the confirmatory soil sampling activities.

- G. The CAD application shall also include all appropriate design features, details and calculations for storm water controls for a 24-hour/25-year storm event during the Off-Site Waste Area closure project and during the post-closure period. The storm water control plan shall comply with all applicable local, state and federal requirements.
- H. The CAD application shall include all specific design features and details regarding the installation/construction of the final cover/capping system in accordance with all applicable provisions under 310 CMR 19.000 and the Manual.
- I. The CAD application shall include a conceptual “post-closure monitoring and maintenance plan” for the Off-Site Waste Area that will be implemented after the completion of the Off-Site Waste Area closure project. The “post-closure monitoring and maintenance plan” may be revised based on the findings of the Off-Site Waste Area assessment activities.
- J. The CAD application shall not include any component that would constitute a lateral increase of the existing foot-print of the Off-Site Waste Area (after excavation/consolidation), or a vertical increase in the proposed final height of the Off-Site Waste Area as indicated in Conceptual Corrective Action Plan, as referenced above in Paragraph 7T.
- K. The Respondents shall respond to any deficiency notice or request for additional information concerning MassDEP’s review of the CAD application within thirty (30) days of being notified by the Department in writing of same.
- L. MassDEP will endeavor to perform its review of the CAD application within the time frames set forth in 310 CMR 4.00, Timely Action Schedule and Fee Provisions.
- M. At the conclusion of its review of the CAD application MassDEP will issue a Provisional Permit Decision on the CAD application pursuant to the provisions of 310 CMR 19.033 (4) subject to a twenty-one (21) day public comment period.

FINANCIAL ASSURANCE MECHANISM (“FAM”)

22. After MassDEP’s issuance of its Final Decision on the CAD application (as referenced in Paragraph 21M) BFI on behalf of the Respondents shall provide MassDEP with documentation that a Financial Assurance Mechanism (“FAM”), in the amount of approximately two million, two hundred and seventy-five thousand (\$2,275,000.00) dollars has been established by BFI on behalf of the Respondents that will be managed in accordance with the provisions of 310 CMR 19.051 for the implementation and completion of the Off-Site Waste Area’s closure plan and post closure monitoring and maintenance.

IMPLEMENTATION OF APPROVED CAD PLAN

23. Upon the effectiveness of the MassDEP’s Provisional Permit Decision on the CAD application (as referenced in Paragraph 21M) and establishment of a FAM (as referenced in Paragraph 22), BFI may commence the delivery, acceptance, stockpiling, and placement of approved landfill closure grading/shaping materials at the Off-Site Waste Area.
24. The acceptance/placement of the approved landfill closure grading/shaping materials shall be allowed to continue for a period of time not to exceed two (2) years from the date of initial placement of the approved landfill closure grading/shaping materials, in order to achieve the approved closure grades in the CAD permit, or until such time as MassDEP determines that the closure activities have caused nuisance conditions or an adverse impact to the environment.
25. BFI shall immediately advise MassDEP in writing of the commencement of the delivery/placement of the approved grading/shaping materials.
26. BFI shall maintain a daily records management system documenting all materials delivered as part of the closure/capping project. Amounts of all such materials shall be recorded in units of weight and volume.
27. BFI shall provide all necessary equipment in order to maintain the cleanliness of roadways that will be utilized as part of the project.
28. All on-site diesel fuel powered construction equipment associated with the project shall be equipped with or suitably retrofitted with oxidation catalysts or particulate traps in order to reduce air pollution emission from the combustion of fossil fuels. NOTE:

Equipment which currently meets EPA Tier 2 and EU Stage 2 Off-Highway Emissions Limits does not require after engine controls.

29. At no time during the Corrective Action should the Off-Site Waste Area grading and shaping or capping activities be allowed to cause or contribute to a public nuisance condition, as a result of dust, noise, odors, etc., or cause or pose a risk or threat to the public health, safety welfare or the environment.

COMPLETION OF CAD COVER CAPPING SYSTEM

30. Within three (3) years of the effectiveness of the MassDEP's Provisional Permit Decision on the CAD application (as referenced in Paragraph 21M), BFI shall complete the installation of the final approved CAD cover/capping system. More specifically, and unless extended pursuant to the provisions of Paragraph 45, the placement of the approved grading/shaping materials will occur during the first two (2) years after effectiveness of the MassDEP's Provisional Permit Decision on the CAD application (as referenced in Paragraph 21M) in order to achieve proper closure grades/configuration..
31. An order of a court, of competent jurisdiction that prohibits BFI from receiving or placing approved grading and shaping materials shall toll the period BFI has to complete the Corrective Action for the period of time the order is in force and effect.
32. BFI's continued performance of the Corrective Action pursuant to this Consent Order will not stay the MassDEP's approval of Closure Certification for the existing permitted landfill, MassDEP's release of financial assurance for closure of the existing permitted landfill or commencement of the existing permitted landfill post closure period.
33. This Consent Order does not relieve BFI from its obligation to complete closure, post closure maintenance, and environmental assessment of the existing permitted landfill, provided, however, that the work contemplated in this Consent Order will not affect or delay closure certification or commencement of the post-closure period for all approved cells within the site assigned limits of the existing permitted landfill.

SUBMITTAL OF INFORMATION

34. Respondents shall pay such permit application fee(s) in accordance with the instruction set forth in the permit application.

35. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Section Chief
Solid Waste Management Section
Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Such notices, submittals and other communications shall be considered delivered by Respondents upon receipt by MassDEP.

36. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondents or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
37. Respondents understand, and hereby waive, their right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review.
38. This Consent Order may be modified only by written agreement of the Parties hereto.
39. MassDEP hereby determines, and Respondents hereby agree, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondents to take the actions described.
40. Respondents are Permittees, as that term is defined in 310 CMR 4.02, for the purpose of assessing and collecting annual compliance assurance fees pursuant to M.G.L. c. 21A, §18 and M.G.L. c. 21E, §3B.
41. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
42. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue

- any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.
43. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondents with respect to any subject matter not covered by this Consent Order.
44. This Consent Order shall be binding upon Respondents and their heirs, successors and assigns. Respondents shall not violate this Consent Order and shall not allow or suffer Respondents' employees, directors, officers, agents, contractors or consultants to violate this Consent Order. Until Respondents have fully complied with this Consent Order, Respondents shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
45. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondents shall immediately, but in no event later than ten (10) days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondents intend to attribute such delay or potential to a Force Majeure event, such notice shall also include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.
46. If MassDEP determines that Respondents' failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondents otherwise comply with the notice provisions set forth above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondents' failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall

- become due for Respondents' failure to perform a requirement of this Consent Order during the extension of time for performance resulting from a Force Majeure event.
47. Delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.
 48. Stipulated penalties, as set forth herein, shall not accrue for any failure to perform provided that they are excused in writing by the Department as a "Force Majeure" event, in accordance with the terms set forth herein.
 49. Unanticipated or increased costs or expenses associated with the implementation of the actions required under this Consent Order, failure to generate anticipated revenues, or changed financial circumstances shall not be considered circumstances beyond the control and without the fault of the Respondents for purposes of complying with the Consent Order.
 50. In addition to the penalty set forth in this Consent Order, if any, (including any suspended penalty), Respondents shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondents violate any provision of this Consent Order:

<u>Violation</u>	<u>Penalty Per Day</u>
1 st day through 30 th day	\$ 500.00 per day/per violation
31 st day thereafter	\$1,000.00 per day/per violation

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day such Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified such Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues such Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separation violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way

Respondents' obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondents' failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondents shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondents reserve whatever rights they may have to contest MassDEP's determination that Respondents failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondents agree to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

51. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondents shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.
52. To the extent authorized by the current owner, Respondents agree to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Off-Site Waste Area for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.
53. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.
54. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the parties on whose behalf they are signing this Consent Order.
55. This Consent Order shall become effective on the date that it is executed by MassDEP (the "Effective Date").

56. This Consent Order shall terminate upon MassDEP's approval of the Respondents' Certification of Closure of the Off-Site Waste Area. MassDEP shall provide BFI and the City with written acknowledgement of the termination of this Consent Order.

Consented To:

BROWNING-FERRIS INDUSTRIES, INC.

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

By: _____

Date: 5/22/2015

Consented To:

CITY OF FALL RIVER

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

By: _____

Date:

Consented To:

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

("MassDEP" and/or the "Department")

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By: _____

Date: 6/26/2015

Philip Weinberg, Regional Director
Southeast Regional Office